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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1967.

No. 944

CITY OF EAST ST. LOUIS,
Respondent,

vs.

UNION ELECTRIC COMPANY, a Corporation,
Petitioner.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Illinois.

ROBERT BRODERICK,
Attorney at Law,
322 First National Bank Building,
East St. Louis, Illinois 62201,

JAMES R. PARHAM,
Attorney at Law,
322 First National Bank Building,
East St. Louis, Illinois 62201,

Attorneys for Petitioner, Union Electric Company, a Corporation.

POPE and DRIEMEYER,
First National Bank Building,
East St. Louis, Illinois 62201,
Of Counsel.

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INDEX.

	Page
Prayer	1
Reports of Opinions Below	2
Grounds on Which Jurisdiction is Invoked	2
Questions Presented for Review	2
Constitutional Provisions, Ordinances and Statutes Involved	5
Statement of the Case	8
Argument and Reasons for the Allowance of the Writ	12
The Effect of the Opinion Below	20
Appendices	A-1

Table of Cases.

Appleby v. New York, 271 U. S. 364, 46 S. Ct. 569, 70 L. ed. 992	13
Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U. S. 673, 50 S. Ct. 451, 74 L. ed. 1107	16
City of East St. Louis v. Union Electric Company, 37 Ill. 2d 537, 229 N. E. 2d 522	2,10
Cleveland v. Cleveland City R. Co., 194 U. S. 517, 24 S. Ct. 756, 48 L. ed. 1102	14
Connolly v. Union Sewer Pipe Company, 184 U. S. 540, 22 S. Ct. 431, 46 L. ed. 679	18
Dartmouth College v. Woodward, 4 Wheat. 518, 4 L. ed. 665	15, 20
Detroit United Railway v. Michigan, 242 U. S. 238, 37 S. Ct. 87, 61 L. ed. 268	13
Duluth & Iron Range Railroad v. County of St. Louis, 179 U. S. 302, 21 S. Ct. 124, 45 L. ed. 201	16
First Nat. Bank v. Weld County, 264 U. S. 450, 44 S. Ct. 385, 68 L. ed. 784	16
Florida Cent. R. R. Co. v. Schutte, 103 U. S. 118, 13 Otto 118, 26 L. ed. 327	15, 19
Hamilton Gaslight & Coke Co. v. City of Hamilton, 146 U. S. 258, 13 S. Ct. 90, 36 L. ed. 963	13
Hartford S. B. I. & Ins. Co. v. Harrison, 301 U. S.	

459, 57 S. Ct. 838, 81 L. ed. 1223 18
Louisville Gas & E. Co. v. Coleman, 277 U. S. 32, 48 S. Ct. 423, 72 L. ed. 770 18
Mercantile Trust & Deposit Company of Baltimore v. City of Columbus, 203 U. S. 311, 27 S. Ct. 83, 51 L. ed. 198 13
Minneapolis v. Minneapolis Street R. Co., 215 U. S. 417, 30 S. Ct. 118, 54 L. ed. 259 13
Nat. Bank of Hyde Park v. Isaacs, 27 Ill. 2d 205, 188 N. E. 2d 704 17
People ex rel. Hafer v. Flynn, 13 Ill. 2d 368, 150 N. E. 2d 183 19
Springfield v. Inter-State Tel. Co., 279 Ill. 324, 116 N. E. 631 12
Stearns v. Minnesota ex rel. Marr, 179 U. S. 223, 21 S. Ct. 73, 45 L. ed. 162 16
Tews v. Woodhiser, 352 Ill. 212, 185 N. E. 827 15
Village of West City v. Telephone Co., 372 Ill. 493, 24 N. E. 2d 352 12
Winter v. Barrett, 352 Ill. 441, 186 N. E. 113 .....4, 17

Constitutions, Statutes and Ordinances Cited.

U. S. Const., art. I, § 10 .....5, 15
U. S. Const., amend. V 5
U. S. Const., amend. XIV, § 1 5
Ill. Const., art. IX 16
28 U. S. C., § 1257 (3) 2
Ill. Rev. Stat., 1933, ch. 120, § 441 ..... 4, 6
Ill. Rev. Stat., 1965, ch. 24, § 8-11-2 .....6, 16
Ill. Rev. Stat., 1965, ch. 111⅔, § 36 (a) 7, 16
East St. Louis, Ill., Ordinance 3193 .....8, 12
East St. Louis, Ill., Ordinance 3698 .....8, 12

Texts Cited.

62 C. J. S., Municipal Corporations, § 442 18
Illinois Law and Practice, Cities and Villages, § 151, p. 465 15

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PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Illinois.

Petitioner, Union Electric Company, a corporation, petitions the Supreme Court of the United States to issue its Writ of Certiorari to review the final judgment of the Supreme Court of Illinois in the cause entitled "City of East St. Louis, Plaintiff-Appellee v. Union Electric Company, Defendant-Appellant" and numbered 40178 in that court, which affirmed the judgment of the Circuit Court for the Twentieth Judicial Circuit of Illinois, St. Clair County, adjudging and declaring that contrary to the express terms of a franchise ordinance, petitioner was obliged to make payments to respondent under the terms of such franchise ordinance without consideration of taxes paid by petitioner to respondent under an ordinance enacted by respondent subsequent to the franchise ordinance. The judgment of the Supreme Court of Illinois became final on September 27, 1967, when that court modified its prior opinion and denied petition for rehearing.

REPORTS OF OPINIONS BELOW.

The opinion and judgment of the Supreme Court of Illinois were filed on May 18, 1967 and the opinion as modified on September 27, 1967, is reported in 37 Ill. 2d 537, 229 N. E. 2d 522. A copy of this opinion, together with a copy of the unreported opinion of the Circuit Court are appended hereto. Rehearing was denied on September 27, 1967.

GROUNDS ON WHICH JURISDICTION IS INVOKED.

(i) The date of the judgment of the Supreme Court of Illinois sought to be reviewed is May 18, 1967. It was entered on that day.

(ii) Petition for Rehearing was denied by the Supreme Court of Illinois on September 27, 1967.

(iii) The statute conferring jurisdiction on this Court to review the judgment of the Supreme Court of Illinois by Writ of Certiorari is U. S. C., Title 28, Section 1257 (3).

QUESTIONS PRESENTED FOR REVIEW.

The suit is one for declaratory judgment. The City sued for a judgment declaring that the Company was obligated for payments which it had not made under a franchise contract expressed in an ordinance enacted by the City and accepted by the Company in 1948. The franchise ordinance provided that the Company's annual payments should be a stated percentage of its gross revenues from sales of electricity as exceeded the aggregate amount of all payments for taxes imposed by ordinance and which the Company annually paid or became liable to pay to the City. The City enacted an ordinance in 1960 under which for that year and each succeeding year the Com-

pany paid taxes to the City in an amount exceeding the percentage of revenues specified in the franchise ordinance. The Company, accordingly, made no payments under the franchise ordinance either in 1960 or in any following year. The trial court found and declared the Company to be liable for franchise payments for 1960 and thereafter, and the Supreme Court of Illinois affirmed.

The questions presented for review are:

(1) Where a contract between the City and Company, expressed in a franchise ordinance, clearly and explicitly provided that the Company's payments to the City should be only that stated percentage of the Company's gross revenues derived from the sale of electric energy "as shall exceed"

> "(b) the aggregate amount of all payments made by Company to the City of East St. Louis or which accrued and for which Company became liable for any . . . taxes . . . imposed by any valid ordinance of the City . . ."

may the City enact a subsequent ordinance under which the Company paid taxes to the City in excess of the payments provided for in the franchise ordinance and at the same time collect payments under the franchise ordinance without unconstitutionally impairing the obligation of the franchise contract in violation of Article I, Section 10 of the Constitution of the United States?

(2) When the Company and City admitted in their pleadings and stipulated of record that the Company paid taxes to the City under an ordinance enacted subsequent to the franchise ordinance and that such taxes so paid exceeded the percentage of gross revenues as specified in the franchise ordinance, may the Supreme Court of Illinois disregard such admitted and stipulated facts and find that the Company paid no such taxes, without depriving the Company of its property without due process in con-

travention of the Fifth and Fourteenth Amendments to the Constitution of the United States?

(3) Can the Supreme Court of Illinois hold as in **Winter v. Barrett**, 352 Ill. 441, 457, 186 N. E. 113, that a tax imposed under an Illinois statute entitled, "An Act in relation to a tax upon persons engaged in the business of selling tangible personal property to purchasers for use or consumption", Ill. Rev. Stats., 1933, Ch. 120, § 441:

> ". . . is not a tax on purchasers of property but is a tax on persons engaged in the business of selling tangible personal property at retail—an occupation tax, . . ."

and then find that a tax authorized by statute and imposed by municipal ordinance upon a company engaged in selling electricity for use and consumption is a tax on the purchasers of such electricity and not upon the company without denying equal protection of the laws to the company in violation of the Fourteenth Amendment to the Constitution of the United States?

(4) May the Supreme Court of Illinois properly refuse to accept the plain and unambiguous language of a franchise contract, and because of its stated dissatisfaction with the result thereof, modify or amend such contract under the guise of construing it and then in so doing determine only "the intent of the law making body" rather than the intent of both parties to such contract as such intent appears from the language of the contract when such language is given its usual and ordinary meaning?

THE CONSTITUTIONAL PROVISIONS, ORDINANCES AND STATUTES INVOLVED.

Article I, Section 10, of the Constitution of the United States and the Fifth and Section 1 of the Fourteenth Amendments thereto are involved:

Article I, Section 10.

"No State shall enter any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

Amendment V.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV, Section 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizer of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, with-

out due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Franchise Ordinance No. 3197 and Utility Tax Ordinance No. 3698, enacted by the City of East St. Louis in 1948 and 1960 respectively, are involved. The provisions of both ordinances are lengthy and are included in the appendix (A-16 and A-22). The following provisions of statutes of the State of Illinois are also applicable:

Ill. Rev. Stat. 1965, Ch. 24, § 8-11-2 (Municipal Code):

"Taxation of Occupations or privileges. The corporate authorities of any municipality may tax any or all of the following occupations or privileges: . . .

"3. Persons engaged in the business of distributing, supplying, furnishing, or selling electricity for use or consumption within the corporate limits of the municipality, and not for resale, at a rate not to exceed 5% of the gross receipts therefrom. . . .

"Any of the taxes enumerated in this section may be in addition to the payment of money, or value of products or services furnished to the municipality by the taxpayer as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon or thereunder of poles, wires, pipes or other equipment used in the operation of the taxpayer's business."

Ill. Rev. Stats. 1933, Ch. 120, § 441 (Revenue Act):

"§ 2. A tax is imposed upon persons engaged in the business of selling tangible personal property at retail in this State at the rate of two per cent (2%) of the gross receipts from such sales in this State of tangible personal property made in the course of such business upon and after taking effect of this Act and prior to July 1, 1935. However such tax is not imposed upon the privilege of engaging in any business in interstate commerce or otherwise, which business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State."

Ill. Rev. Stats. 1965, Ch. 111⅔, § 36 (a) (Public Utilities Act):

"(a) Whenever a municipality pursuant to Section 8-11-2 of the Illinois Municipal Code, as heretofore and hereafter amended, imposes a tax on any public utility, such utility may charge its customers, in addition to any rate authorized by this Act, an additional charge equal to the sum of (1) an amount equal to such municipal tax, or any part thereof, (2) 3% of such tax, or any part thereof, as the case may be, to cover costs of accounting, and (3) an amount equal to the increase in taxes and other payments to governmental bodies resulting from the amount of such additional charge. Such utility shall file with the Commission a true and correct copy of the municipal ordinance imposing such tax; and also shall file with the Commission a supplemental schedule applicable to such municipality which shall specify such additional charge and which shall become effective upon filing without further notice. Such additional charge shall be made by the addition of a uniform percentage to the amounts payable for intrastate utility service in such municipality and shall be shown separately on the utility bill to each customer. The Commission shall have power to investigate whether or not such supplemental schedule correctly specifies such additional charge, but shall have no power to suspend such supplemental schedule. If the Commission finds, after a hearing, that such supplemental schedule does not correctly specify such additional charge, it shall by order require a refund to the appropriate customers of the excess, if any, with interest, in such manner as it shall deem just and reasonable, and in and by such order shall require the utility to file an amended supplemental schedule corresponding to the finding and order of the Commission."

STATEMENT OF THE CASE.

The case was presented on the complaint, the verified answer and a stipulation of facts. No testimony was offered. The stipulation, with copies of the franchise and utility tax ordinances attached, is appended (App. C, p. A-13).

Union Electric Company, a public utility, furnishes electric service in the City of East St. Louis, Illinois. The Company and City negotiated a franchise contract in 1948 which became effective when the City enacted Franchise Ordinance No. 3193 and the Company accepted such ordinance. The ordinance specified certain initial payments which the Company made and then provided that for each calendar year after 1949 the Company should pay to the City an amount, if any, by which a stated percentage of the Company's gross revenues from sale of electric energy in the City exceeded

> "(b) the aggregate amount of all payments made by Company to the City of East St. Louis, or which accrued and for which Company became liable, during the preceding calendar year, for or on account of permit and inspection fees, or any other fees, licenses, charges, taxes or other exactions of whatsoever kind or character not in derogation of the rights, franchise, permission and authority hereby granted (except general taxes on tangible property) imposed by any valid ordinance of the City of East St. Louis."

The Company made franchise payments to the City until 1960 when the City enacted Utility Tax Ordinance No. 3698. Sections 1 and 1 (c) of this ordinance imposed a tax upon the Company. They provided:

> "A tax is imposed on all persons engaged in the following occupations or privileges: . . .

> "c. Persons engaged in the business of distributing, supplying, furnishing, or selling electricity for use or consumption within the corporate limits of the City of East St. Louis, Illinois, and not for resale, at the rate of 4.48% of the gross receipts therefrom."

The Company paid the City the utility tax which in 1960 and annually thereafter exceeded the amount of the percentage of gross revenues specified in the franchise ordinance. The Company, accordingly, commencing in 1960, discontinued its franchise payments.

Three years later the City sued for a declaratory judgment that the Company was obligated for franchise payments notwithstanding the contractual provisions of the franchise ordinance and the Company's payment of the utility tax. The Company's answer filed in the trial court on February 10, 1964, to the City's complaint alleged that the declaration which the City asked would impair (Rec. 25):

> ". . . the obligation of the contract existing between plaintiff and defendant, the terms and provisions of which are set forth in Ordinance No. 3193, in violation of the provisions of the Constitution of the United States and Section 10 of Article I thereof . . ."

The Company urged this constitutional question in a memorandum filed with the trial court on February 5, 1965, in which it asked the court to find (Rec. 65):

> " 'the construction of and the effect which the City asks this Court to give to the provisions of the Utility Tax Ordinance would cause such ordinance and its terms and conditions as so construed to be a law or ordinance impairing the obligation of the contract existing between Union Electric Company and the City, the terms of which are set forth in

> the Franchise Ordinance in violation of Section 10 of Article I of the Constitution of the United States . . .' "

and cited authorities in support of this request (Rec. 65-71). The Company reurged the constitutional question in its motion to vacate and set aside the trial court's order and judgment of September 14, 1965 (Rec. 41-43). The trial court denied this motion on June 13, 1966 and decided the constitutional question contrary to the Company's contention (Rec. 29).

The constitutional question was presented to the Supreme Court of Illinois by the Company's brief filed there. The Company requested the Supreme Court to hold,

> "The trial court's declaration that defendant's tax payments under the Utility Tax Ordinance shall not be considered in determining defendant's obligation for payments under the Franchise Ordinance unconstitutionally impairs the obligation of contract under the Franchise Ordinance" (Rec. Index 2, p. 16),

and devoted ten pages of a twenty-eight page brief to such constitutional question (Rec. Index 2, pp. 16-26). The Supreme Court of Illinois decided this question, 37 Ill. 2d 537, 544:

> "It is apparent from what we have said that we deem that the argument of the Company that the utility tax ordinance unconstitutionally impairs the obligation of contract between it and the City is without merit."

The trial court limited its determination to finding that "because of the intent of the parties and the wording and phrasing of the Franchise Ordinance" the taxes which the Company paid to the City under the utility tax ordinance did not constitute a "tax or taxes within the mean-

ing of Section 6, Paragraph B of the Franchise Ordinance" (App. p. A-12). The constitutional questions of due process and equal protection of the laws entered the case when the Supreme Court of Illinois held, contrary to stipulated fact, that the Company had not paid the utility tax to the City and that such tax was imposed on the consumer rather than on the Company.

ARGUMENT AND REASONS FOR THE ALLOWANCE OF THE WRIT.

1) The franchise ordinance No. 3193 on acceptance by the Company in 1948 became a contract binding upon the City and Company. Its terms could not be varied by either without the consent of the other. **Village of West City v. Telephone Co.**, 372 Ill. 493, 495, 24 N. E. 2d 352, 353; **Springfield v. Inter-State Tel. Co.**, 279 Ill. 324, 327, 116 N. E. 631, 633. This contract clearly and explicitly limited the Company's payments to that amount, if any, by which its stated percentage of gross revenues from the sale of electricity exceeded the aggregate amount of all "fees, licenses, charges, taxes or other exactions of whatsoever kind or character" imposed by ordinance and which the Company paid or became liable to pay to the City.

The City in 1960 imposed a tax upon the Company by Utility Tax Ordinance No. 3698. The City stipulated with the Company:

> "8. Since August 1, 1960, the effective date of Ordinance No. 3698, Union Electric Company, has paid the full amount of the tax imposed upon it by the terms and provisions of Ordinance No. 3698 within the time specified in such ordinance," and
>
> "9. The tax imposed upon and paid by Union Electric Company to the City of East St. Louis under the terms and provisions of Ordinance No. 3698 for the calendar years 1960, 1961, 1962, 1963 and 1964 has, in each of such years, exceeded the total of the percentages of gross revenue, as determined under the terms and provisions of Ordinance No. 3193" (App. p. A-14).

The Company's contractual obligation to the City was defined and established in the franchise ordinance, the

terms of which plainly provided that the Company's utility tax payments excused payment under the franchise ordinance. The determination of the Circuit and Supreme Courts of Illinois to the contrary deprived the Company of a valuable contract right secured by the franchise ordinance and unconstitutionally impaired the franchise contract.

Municipal legislation enacted pursuant to state legislative authority is considered to be state law for the purpose of raising the constitutional question. **Mercantile Trust & Deposit Company of Baltimore v. City of Columbus,** 203 U. S. 311, 320, 27 S. Ct. 83, 51 L. ed. 198; **Hamilton Gaslight & Coke Co. v. Hamilton,** 146 U. S. 258, 13 S. Ct. 90, 36 L. ed. 963.

This Court will enforce the federal constitutional protection against impairment of contract when a state court has interpreted and enforced municipal legislation in a manner to defeat such guaranty.

Minneapolis v. Minneapolis Street R. Co., 215 U. S. 417, 30 S. Ct. 118, 54 L. ed. 259;

Detroit United Railway v. Michigan, 242 U. S. 238, 37 S. Ct. 87, 61 L. ed. 268;

Appleby v. New York, 271 U. S. 364, 46 S. Ct. 569, 70 L. ed. 992.

This Court, in so doing, exercises its independent judgment to determine if the contract obligation was impaired by subsequent legislation as enforced by the state court.

Detroit United Railway v. Michigan, 242 U. S. 238, 37 S. Ct. 87, 61 L. ed. 268;

Appleby v. New York, 271 U. S. 364, 46 S. Ct. 569, 70 L. ed. 992.

In **Detroit United Railway,** rates of fare within defined areas were fixed by franchise ordinances of 1899. The areas were extended by subsequent annexation legislation

which the Supreme Court of Michigan construed in a manner to alter the contracts expressed in the franchise ordinances. This court there held, 61 L. ed. 274:

> ". . . it is too well settled to be open to further debate, that where this court is called upon in the exercise of its jurisdiction to decide whether state legislation impairs the obligation of a contract, we are required to determine upon our independent judgment these questions: (1) was there a contract? (2) If so, what obligation arose from it? (3) Has that obligation been impaired by subsequent legislation?"

It concluded, p. 275:

> "It results that the provisions of the township and village ordinances respecting the rates of fare remained in full force and effect after the acquisition of the suburban lines by plaintiff in error, notwithstanding its previous acquisition of the city lines or the previous assent of the city railway companies to the ordinances of 1899. Because of the provision of Sec. 10 of art. 1 of the Constitution of the United States, it was not within the power of the state of Michigan by any subsequent legislation to impair the obligations of those contracts, and since the judgments of the supreme court of that state gave such an effect to the Annexation Acts of 1905 and 1907, in conjunction with the ordinances of 1889, as to impair those obligations, the judgments must be reversed."

To the same effect is **Cleveland v. Cleveland City R. Co.**, 194 U. S. 517, 24 S. Ct. 756, 48 L. ed. 1102.

The Illinois Supreme Court held that the Company's contract with the City was unimpaired because,

> ". . . the status quo of the contractual relationship is undisturbed."

The opposite is obvious. The franchise contract insured the Company's right to measure the basis for franchise payments against the utility taxes paid. The judgment of the Supreme Court of Illinois removed this right, required payments to be made which the franchise agreement excused and impaired the contract obligation.

(2) The Illinois Supreme Court disregarded the provisions of the utility tax ordinance and the stipulated facts of record and found that the utility tax was neither imposed upon nor paid by the Company. It held that the burden of the tax "clearly was to be on the consumers, not on the Company." It suggested that for this reason the formula clearly stated in the franchise contract for determining payments thereunder should be set aside since its application would give the Company "the best of possible worlds."

It was not the function of the Illinois Supreme Court to determine whether the franchise contract gave the Company this characterized advantage. Its function, rather, was to take the ordinance as it was and to give the usual and ordinary meaning to the language which was used. It had neither the right nor the duty under the guise of construction to rewrite the franchise contract which the City and Company had made.

Florida Cent. R. R. Co. v. Schutte, 103 U. S. 118, 13 Otto 118, 26 L. ed 327, 335;
Tews v. Woodhiser, 352 Ill. 212, 185 N. E. 827;
I. L. P., Cities and Villages, etc., Ch. 5, § 151, p. 465.

This Court early held that any alteration of a contract even though manifestly for the interest of the objecting party unconstitutionally impairs its obligation in violation of Article I, Section 10.

Dartmouth College v. Woodward, 4 Wheat. 518, 4 L. ed. 665.

The Illinois Supreme Court rejected the stipulated and admitted fact that the Company had paid the utility tax, found that it had not, ordered the franchise contract to be applied as though such tax had not been paid and unconstitutionally deprived the Company of its property without due process.

Duluth & Iron Range Railroad v. County of St. Louis, 179 U. S. 302, 21 S. Ct. 124, 45 L. ed. 201;

Stearns v. Minnesota ex rel. Marr, 179 U. S. 223, 21 S. Ct. 73, 45 L. ed. 162.

The constitutional protection reaches the Illinois Court's order, for:

> "The violation is nonetheless clear when that result is accomplished by the state judiciary in the course of construing an otherwise valid (**First Nat. Bank v. Weld County,** 264 U. S. 450, 68 L. ed. 784, 44 Sup. Ct. Rep. 385) state statute. The federal guaranty of due process extends to state action through its judicial, as well as through its legislative, executive, or administrative, branch of government."

Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U. S. 673, 50 S. Ct. 451, 74 L. ed. 1107, 1113.

(3) The City imposed the utility tax upon the Company under authority of the Illinois Municipal Code which authorized the taxation of occupations or privileges (Ill. Rev. Stat. 1965, Ch. 24, § 8-11-2). The Illinois Legislature, under an independent statute, the Public Utilities Act (Ill. Rev. Stat. 1965, Ch. 111⅔, § 36 (a)), extended permissive right to utilities to recover all or a part of such tax by a charge to its customers therefor. The Illinois court below found that the Company made a charge for the tax to its customers and thereby changed the tax from an occupation tax permitted by the Illinois Constitution, Article IX, to a consumer tax which is not so authorized. The Illinois court has uniformly treated other

occupation taxes precisely to the contrary. It held in **Nat. Bank of Hyde Park v. Isaacs**, 27 Ill. 2d 205, 207, 188 N. E. 2d 704, 705:

> "The retailers' occupation tax is levied upon the seller, and the custom of passing the burden to the buyer by means of a price increase does not alter its nature. It is the legal incidence of the tax that controls."

In **Winter v. Barrett**, 352 Ill. 441, 186 N. E. 113, the Court considered an act which imposed an occupation tax on retailers. It said there, p. 455:

> "The title of the act does indicate that the tax is upon persons engaged in the business of selling tangible personal property at retail. By section 2 the tax is imposed on such persons, and the measure of the tax is fixed as three per cent of the gross cash receipts from sales of tangible personal property by such persons. Section 3 provides for returns to be made by such persons giving information from which the amount of the tax may be determined. From these provisions it appears that the tax is imposed upon persons engaged in the business mentioned. They are the persons who are required to pay the tax. They are not made the agents of the State or of the Department of Finance to collect the tax from purchasers and pay it over to the department, but the tax is imposed on them and they are the ones who are required to pay it. By the provisions of the act they are neither required to take nor prohibited from taking into consideration the amount of tax to be paid by them in fixing the selling prices of articles sold."

p. 456:

> "So far as determining the character of the tax imposed by the act, they do not indicate that the tax

is on the purchasers or consumers but simply show that the General Assembly had in mind that persons engaged in business would, in fixing the price of articles sold by them, take into consideration the tax to be paid under the act, the same as they do their property taxes, rent and other expenses of doing business."

p. 457:

"We hold that the tax is not a property tax and is not a tax on purchasers of property but is a tax on persons engaged in the business of selling tangible personal property at retail—an occupation tax."

The Illinois Supreme Court finds that an occupation tax imposed upon companies other than the company here may be passed on to their customers without changing the incidence of the tax. The Court holds in the Company's case this cannot be done and arbitrarily denies the Company the constitutional guaranty of equal protection.

Hartford S. B. I. & Ins. Co. v. Harrison, 301 U. S. 459, 57 S. Ct. 838, 81 L. ed. 1223;

Louisville Gas & E. Co. v. Coleman, 277 U. S. 32, 48 S. Ct. 423, 72 L. ed. 770.

" 'Due process of law and the equal protection of the laws,' this court has said, 'are secured, if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government.' "

Connolly v. Union Sewer Pipe Company, 184 U. S. 540, 22 S. Ct. 431, 46 L. ed. 679, 689.

(4) The terms of the franchise ordinance are so explicitly clear and free from ambiguity they leave no room for construction.

62 C. J. S., **Municipal Corporations,** 442:

> "Where the language is clear and explicit and free from ambiguity, there is no room for construction, and the rules of construction are inapplicable. In such a case the ordinance must be interpreted according to its terms without resort to other means of interpretation."

The Illinois Supreme Court, however, undertook to construe the ordinance. In doing so it avoided guide lines set by this Court in **Florida Cent. R. R. Co. v. Schutte,** 103 U. S. 118, 13 Otto 118, 26 L. ed. 327, 335, that,

> ". . . contracts created by or entered into under the authority of statutes are to be interpreted according to the language used in each particular case to express the obligation assumed. . . . The object is to find out from the words used what the parties intended to do."

and disregarded its own rule stated in **People Ex Rel. Hafer v. Flynn,** 13 Ill. 2d 368, 377, that

> ". . . in construing many cases involving contracts created by acts of municipalities, Illinois courts have applied the standard rules of construction."

The Court considered the franchise contract as though it were a regulatory ordinance and construed it with the principal purpose "to determine the intent of the law making body." Those cases involving regulatory, licensing, zoning and penal ordinances which announce this rule and upon which the Court depended, have no application to the franchise ordinance. If construction was required the Court should have determined the intent of both Company and City, as parties to the franchise contract, as such intent appeared from the language used.

The language of the franchise ordinance clearly expresses the obligation assumed thereunder. The Illinois Supreme Court was dissatisfied with the result of the ap-

plication of such clearly expressed obligation. Such dissatisfaction, however, is an insufficient basis for attributing meaning to the franchise language which it plainly does not have.

THE EFFECT OF THE OPINION BELOW.

The opinion of the Supreme Court below strikes at the foundation of a basic constitutional guaranty of freedom from impairment of contract which this Court has jealously guarded and vigorously enforced from at least the time Chief Justice Marshall spoke for this Court in **Dartmouth College** almost a century and one-half ago.

The provisions of the franchise contract here involved, by common knowledge, are not unique. They may be found in same or similar form in franchise ordinances in a multitude of cities, towns and villages, large and small, throughout the State of Illinois. The substantial impact which the lower Court's opinion will have on petitioner is apparent on the record. What is not of record but which is of far greater significance is the circumstance that this opinion, if permitted to stand, will reach into contractual arrangements across all of Illinois and will stand as a forceful and compelling precedent for the abrogation of existing agreements and the unconstitutional impairment of the obligation of contract. This is the very real and present hazard which this case presents and which argues urgently for the issuance of this Court's writ.

If the Supreme Court of Illinois, or any other court, can ignore stipulated facts and clear and unequivocal language of a contract of which it disapproves and find in consequence that the agreement means something other than it plainly states, the sanctity of contract which the federal Constitution insures is rendered meaningless indeed.

Petitioner respectfully requests this Court to issue its writ of certiorari to the Supreme Court of Illinois.

Respectfully submitted,

UNION ELECTRIC COMPANY,
a Corporation,

By: ROBERT BRODERICK,
322 First National Bank Building,
East St. Louis, Illinois,

JAMES R. PARHAM,
322 First National Bank Building,
East St. Louis, Illinois,
Its Attorneys.

POPE and DRIEMEYER,
322 First National Bank Building,
East St. Louis, Illinois,
Of Counsel.